Supreme Court, U.S.
FILED

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No. _____

SUPREME COURT OF THE UNITED STATES

CANDICE L.MIRAVALLE,
personally and on behalf of:
EXPRESS LEGAL SERVICES, INC. - Petitioner

vs.

THE FLORIDA BAR, - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

CANDICE L. MIRAVALLE,
personally and on behalf of:
EXPRESS LEGAL SERVICES, INC.
129 W. Hibiscus Blvd.
Melbourne FL 32901
(321) 729-6399

35pp

QUESTIONS PRESENTED FOR REVIEW

Introductory statement:

The State of Florida, through Statute, provides that all persons have the right to conduct their cause in any court of the State. The role of Respondent, in their attempt to interfere with this right, was called to public attention in the mid-80's, including an expose on the television show 60 Minutes, when Respondent brought legal action against a woman for practicing law who was helping prepare legal documents for people who could not afford representation by an attorney. In response to the public's outcry for other avenues of document preparation, coupled with the Court's recognition of the increase in Pro Se litigants, in July 1987, the Supreme Court of Florida approved an amendment to the Rules Governing Unlicensed Practice (Appendix C) which provided, in part, that "it shall not constitute the unlicensed practice of law for a non-lawyer to engage in limited oral communications to assist a person in the completion of blanks on a legal form approved by the Supreme Court of Florida." However, no Supreme Court approved forms existed making the regulation impossible to comply with. It was, therefore, necessary for Petitioner to obtain information from public sources in order to develop forms, questionnaires and procedures for usage in the operation of Petitioner's business of preparing legal forms when Petitioner opened her business three months later. Petitioner did petition the Supreme Court for approval of the forms which she developed by the Petition was denied without review or consideration of the forms. It was and continues to be the goal of Petitioner to be a law-abiding citizen by making every effort to comply with all laws and regulations. It is Petitioner's opinion that this case should be reviewed since Petitioner's rights, as outlined under the Fourteenth Amendment of the Constitution of the United States, were violated when the Supreme Court of Florida ruled that

Petitioner could no longer provide services to the public in the manner in which Petitioner had been providing.

Respondent did not submit forms for approval for numerous years. It was not until approximately six years after the amendment that the first forms submitted by Respondent were approved. Since then, the forms have been extensively revised. To date, there continue to be forms which Petitioner uses in the operation of her business in areas in which Respondent has not submitted forms for approval and has no intention of submitting for approval. Since commencement of this action in the Supreme Court of Florida, Petitioner did again petition the Supreme Court for approval of her forms but was, once more, denied without review or consideration of the forms.

Additionally, Respondent is regulating Petitioner's business by placing restrictions upon the wording used in Petitioner's business name and advertising in violation of Petitioner's rights under the Fourteenth Amendment of the Constitution. Respondent, upon Respondent's beliefs but without supporting evidence, is imputing upon the public the public's lack of judgment in being able to distinguish their reliance placed upon Petitioner simply due to Petitioner's usage of the word "legal" in her business name and advertising.

Questions presented for review:

I. Can an individual or business be held liable for improper actions taken in an effort to comply with a regulation when the administrative agency has not provided the tools necessary to comply with the regulation?

II. Can an individual or business be held liable for non-compliance with a regulation when the administrative agency has not provided the tools necessary to comply with the regulation?

III. Can an individual or business be held liable when the administrative agency responsible for enforcement of the regulation provides consent to an alternate manner of action available for compliance and the administrative agency later holds the individual or business liable for violation of the original regulation?

IV. Can an individual or business be restricted in the usage of a word in their name?

V. Has an administrative agency violated Amendment Fourteen of the Constitution of the United States when it abridges the privileges of a citizen and deprive that citizen of life, liberty, or property, or denies a person equal protection and due process under the laws when it imposes upon the person a regulation which cannot be complied with.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

The decision of the Florida Supreme Court is reported at 761 So2d 1049, and is reproduced in the Appendix filed herewith. (Appendix A).

Plaintiff's Motion for Rehearing was denied on July 17, 2000 and is reproduced in the Appendix filed herewith (Appendix B).

STATEMENT OF JURISDICTION

The decision of the Florida Supreme Court was rendered on May 18, 2000. A copy of that decision appears at Appendix A.

A timely Motion for Rehearing was thereafter denied on July 17, 2000. A copy of the Order denying rehearing appears at Appendix B.

Jurisdiction of this Court is invoked under 28 USC 1257 and Rules of the Supreme Court of the United States, Rule 10.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Amendment Fourteen of the Constitution of the United States

STATEMENT OF THE CASE

I. FACTS:

Petitioner, on three (3) matters, assisted her customers, all of whom had previously been under the assistance of legal counsel, as follows:

a. A Husband and Wife, already having been under the guidance of separate legal counsel for a contested divorce action, contacted Petitioner for the preparation of a Marital Settlement Agreement to settle the matter as they could no longer afford the assistance of their attorney.

Petitioner did prepare the Marital Settlement Agreement with the information provided orally and in writing by the Husband and Wife.

b. A woman who had previously filed for Chapter 7 bankruptcy through an attorney who, as she later discovered, had failed to file the appropriate legal pleadings to remove a judgment lien from real property, which had been discharged in bankruptcy, and which attorney she could not afford the legal fees for to complete that which the woman thought she had previously paid the attorney to complete.

Petitioner, with information provided orally and in writing by the woman, did prepare a Motion to Re-Open Case and, after the motion was denied by the Court, an Amended Motion to Reopen which was also denied. Though no explanation was given by the Court for the denials, it was the understanding of Petitioner that too much time had passed since the filing of the original bankruptcy action. Since no positive result could be obtained in Bankruptcy Court, Petitioner did prepare a Motion for Order of Cancellation and Discharge of Judgment and, since a previously prepared Motion for Order of Cancellation and Discharge of Judgment had been refused to be heard by the Court because the Court said the judgment in that case had been discharged in bankruptcy with no further action necessary, Petitioner also prepared a Motion to Declare Judgment is Not Lien on Homestead and to Quiet Title.

c. A man who had previously been represented by an attorney in a divorce action who, as he later discovered, had failed to inform the man that debts, which the man's Former Wife was to pay pursuant to the divorce paperwork, were still the responsibility of the man in the event his Former Wife failed to pay the debts. The man had previously been a customer of Petitioner for the preparation of bankruptcy documents. He returned to Petitioner to seek further assistance to discharge the debt that, if his divorce attorney had told him, he was still liable for and should have included in the bankruptcy.

Petitioner, with information provided orally and in writing by the man, did prepare a Motion to Re-open Case.

Petitioner performed research to develop forms for use in her business as forms necessary for Petitioner's assistance of her customers were nonexistent or insufficient.

Petitioner uses the word "legal" in the business name and advertisements of Petitioner's business.

II. PROCEDURAL BACKGROUND.

Respondent filed an action against Petitioner for (A) the unlicensed practice of law on the three (3) matters that Petitioner prepared forms for her customers, (b) the research that Petitioner had performed and (c) the usage of the word "legal" in the business name and advertisements of petitioner's business.

In response to Interrogatories propounded upon Petitioner by Respondent (Appendix E):

a. Petitioner stated that she had performed research, drafted the document, discussed the document with her customer and typed the document.

b. Petitioner stated that the information which was provided in writing by her customers were prior legal pleadings of the customers, a deed and letter from a creditor.

c. Petitioner stated that the information provided verbally by her customers was that which was not contained in the prior legal pleadings of the customers, a deed and letter from a creditor.

Respondent also filed with the Court an Affidavit from an advertising newspaper that showed the usage of the word "legal" in Petitioner's business name and the add contents.

In response to Interrogatories propounded upon Respondent by Petitioner (Appendix D), Respondent stated that forms other than Supreme Court Approved Forms may be used in the manner provided in the response to the interrogatory.

Based upon the response to the interrogatories and the ad, Respondent filed a Motion for Summary Judgment (Appendix E) setting forth that Petitioner had engaged in the unlicensed practice of law by performing legal research for customers, drafting legal documents, and engaging in oral communications with customers to obtain information to prepare legal documents which were not Florida Supreme Court approved forms and, through the business name, held itself out as being able to provide legal services to the public.

In the State of Florida, an action involving the unlicensed practice of law is automatically commenced in the Supreme Court of Florida. No Jury trial by their peers is afforded the alleged offender. The Supreme Court appoints a referee, a judge, to adjudicate the matter. If the matter is not completed expeditiously, the Supreme Court does not allow the proceeding to progress at its own course by inquiring into the reason for delay thereby placing pressure upon the referee to finalize without consideration of the consequences this places on the alleged offender's defense. There is no higher Court for appeal in the State of Florida.

A hearing on the Motion for Summary Judgment was held before a referee who entered a Summary Judgment against Petitioner.

An objection was filed to the Supreme Court of Florida. The Supreme Court approved the report of the referee and adopt the order granting the Bar's motion for summary judgment (Appendix A).

A Motion for Rehearing was denied (Appendix B).

REASONS FOR GRANTING THE PETITION

I. Respondent, concurrent with its petition to amend the Rules Governing Unlicensed Practice, failed to provide legal forms for approval by the Supreme Court of Florida. The failure caused Petitioner to perform research of the public sources in the law library of the county courthouse in order to develop forms for use in her business. Petitioner's goal in performing the research was to develop forms for use in her business and to submit the forms for approval to the Supreme Court of Florida. When Petitioner petitioned the Court for approval, the court denied the petition without any review of the forms (Approval of Forms Re Miravalle, Docket #72-526. Petition Denied. Decision without published opinion).

It is Respondent's belief that Petitioner's performing of research is the practice of law and, upon that belief, Respondent sued Petitioner for the unlicensed practice of law. No research was performed directly for any of Petitioner's customers; only indirectly to obtain the information to perform the research necessary to develop forms for future preparation of forms for the customers.

How can a law-abiding citizen comply with laws and regulations when the tools necessary to comply are unavailable? Should they then be found in violation of the law or regulation when they make an effort to comply?

The failure of Respondent to submit forms for approval by the Supreme Court of Florida is of great importance to this or any action taken by any administrative agency. Many aspects of our lives are governed by administrative agencies. If one agency is allowed to make a regulation impossible to comply with, will others follow? How can an administrative agency take action for an improper action when the action was only taken in an effort to comply with a regulation when the agency has not provided the tools necessary to comply with the regulation? Was the Respondent's effort only to appease the persons who were upset with the action they took against the woman from the 60 Minutes expose? Did they

intentionally create a regulation that was impossible to comply with?

Furthermore, the research Petitioner performed was to locate forms for use in her business. The forms are located in the law library in the Courthouse. All persons are allowed access to the law library making the forms available to the general public for their finding.

In The Florida Bar v. Florida Service Bureau, Inc., 581 So2d 900 (Fla 1991), Respondent pursued an action against a business which provided assistance to landlords seeking eviction of delinquent tenants. The Supreme Court of Florida dismissed the case stating that the Bar had failed to prove its case in that the information given was no greater than that which anyone could glean from the reading the statutes.

The forms Petitioner researched in this action are the same forms which other persons can obtain from reading the books in the law library. Likewise, Respondent has failed to prove its case as in the foregoing case. The Supreme Court of Florida, without regard for its decision in Florida Service Bureau, Inc., ruled that Petitioner was improper in her actions of researching the forms.

In order to effect Petitioner's right of due process under the Fourteenth Amendment of the Constitution, Petitioner must be provided the opportunity to bring this matter before a higher Court for review of the decision of the Supreme Court of Florida. The Supreme Court of Florida cannot be called upon to correct a conflict with a prior decision in a related matter.

II. At the time of the amendment to the Rules Governing Unlicensed Practice and continuing to date, legal forms approved by the Supreme Court of Florida, sufficient to meet the needs of Petitioner in providing the service of the preparation of legal forms for her customers, were and continue to be unavailable. As a consequence, Petitioner, in order to operate her business, has been forced to develop her

own forms. This was done to comply with the regulations of the State.

Petitioner has twice petitioned the Supreme Court for approval of forms she has developed but, on both occasions, the Petitions were denied without review or consideration of the forms (Approval of Forms Re Miravalle, Docket #72,526 Petition dismissed, Decision without published opinion and Approval of Forms Re Miravalle, Docket #94.389, Petition dismissed, Decision without published opinion).

Despite Petitioner's attempts to have the forms she developed approved by the Supreme Court and Respondent's failure to submit for approval forms which are adequate to provide for the needs of Petitioner's customers, Respondent pursued an action against Petitioner for the improper preparation of forms which were not Supreme Court approved.

In Ivaran Lines, Inc. v. Waicman, 461 So2d 123 (Fla App 3 Dist. 1984), an action was brought against a shipping company for violation of a statute which required a certificate was required for shipping of an automobile. The shipping company denied violation of the statute contending that the administrative agency did not implement or put in effect the statute in that no certificates or forms of application therefor were available until a date subsequent to shipment. The Court found the statute, which required the performance of something which cannot be performed, to be inoperative.

In this action, Respondent failed to submit and continues to refuse to submit forms for approval to the Supreme Court making it impossible for Petitioner to comply with the regulation which required that only "Supreme Court approved forms" be prepared. The regulation is therefore inoperative. The Supreme Court, without regard for Ivaran, ruled that Petitioner was incorrect in preparing forms which are not Supreme Court approved forms.

The failure to provide forms is of great importance to this or any action taken by any administrative agency. It is improper for an agency to hold an individual liable for

noncompliance with a regulation when the agency has not provided the tools necessary to comply with the regulation.

The decision of the Supreme Court of the State of Florida in the present action conflicts with a prior decision in the State of Florida. Petitioner is entitled under the Fourteenth Amendment of the Constitution of the United States to due process. Since the action against Petitioner was commenced in the Supreme Court of the State of Florida, there is no higher Court, other than the Supreme Court of the United States, to decide a matter when two decisions from Courts of the State of Florida conflict with each other. We cannot call upon the Supreme Court of Florida to correct a conflict involving itself.

III. Respondent, in its response to interrogatories, provides the opportunity to non-lawyer businesses to prepare forms for customers which are not Supreme Court approved forms. Please recall that Petitioner researched to develop forms for use in her business and approval by the Court. However, without regard for the alternative method for a nonlawyer business to prepare forms for customers, Respondent brought its action against Petitioner for the preparation of forms which were not Supreme Court approved.

Though there are no prior decisions concerning this issue in the area of law, there is a decision concerning another agency which indicates that Respondent's actions are improper. In Florida Livestock Board v. Gladden, 76So2d291 (Fla 1954), a statute restricting the feeding of uncooked garbage to hogs became effective on August 4, 1953. The State Livestock Sanitary Board, the administrative agency responsible for administering the statute, is allowed to promulgate rules under the statute and did promulgate a rule that they advertised would not become effective until August 15, 1953, even though the statute became effective earlier. The Supreme Court held that the Florida Livestock Board was stopped from enforcing the effective date for

enforcement of a Statute when the administrative agency had advertised a later effective date and the act was tantamount to the perpetuation of a fraud by an administrative agency of the State against one of its citizens.

In this case, Respondent provided the opportunity to nonlawyer businesses to prepare forms for customers which are not Supreme Court approved forms. However, without regard for the alternative method, Respondent brought its action against Petitioner for the preparation of forms which were not Supreme Court approved. Respondent, by affording an alternative method of preparing forms which are not Supreme Court approved forms, has perpetuated a fraud upon Petitioner when it now attempts to enforce the rules requiring the use of Supreme Court approved forms.

Respondent's action is of great importance to this or any action taken by any administrative agency. Isn't it improper for an agency to enforce a regulation against an individual or business when the agency responsible for enforcement of the regulation provides an alternate manner of action available for compliance?

The decision of the Supreme Court of the State of Florida in the present action conflicts with a prior decision of the same Court. There is no higher Court to decide a matter and provide to Petitioner due process under the Fourteenth Amendment of the Constitution when two decisions of the Supreme Court of the State of Florida conflict with each other other than the Supreme Court of the United States. Would it be proper to call upon the Supreme Court of Florida to correct its conflicting decisions?

IV. Petitioner opened her business EXPRESS LEGAL SERVICES, INC. on October 1, 1987. On October 9, 1997, in The Florida Bar v. Davide, 702 So2d 184 (Fla 1997), the Supreme Court of Florida ruled that non-lawyer businesses could not use the word "legal" in their name or advertisements. This decision was based upon a belief that

the name could mislead the public to believe that the business can render legal services.

However, in another profession but similar facts, on May 31, 1957, in Florida Accountants Ass'n v. Dandelake, 98 S02d 323, the Supreme Court of Florida ruled that so long as accountants did not use the statutory title of 'certified public accountant' or 'public accountant' or any other designation that might mislead the public into believing that they hold a certificate from the State Board which regulated certified public accountants, accountants could use the word accounting in their name and advertising.

Though that case involved accountants, it is similar and conflicts with the present case as lawyers and accountants are professions regulated by the State; just involving different professions.

Furthermore, on January 10, 1978, in Florida Bar v. The Brumbaugh, 355 So2d 1186 (Fla 1978), the Supreme Court held that Ms. Brumbaugh could advertise her business activities of "... selling legal forms...". Brumbaugh, which allows for advertisement which include the word "legal" conflicts with Davide and the present case where the Court set forth that the word "legal" could not be used in advertisements. In consideration of the prior Court decisions, it was incorrect for the Court to determine that a non-lawyer can be can be restricted in the usage of a word, the word "legal", in their name?

Additionally, under the doctrine of "ex post facto", Petitioner used the work "legal" in her business name and advertisements for ten years prior to the Court's ruling in Davide. It is improper and overbearing to now require Petitioner to change her name and advertisements to meet the requirements of a subsequent Court decision. It is common for businesses to describe their service in their business name. The word "legal" is an active part of Petitioner's business name and advertisements. The removal of the word interferes with Petitioner's ability to publicize her service.

The decision of the Supreme Court of the State of Florida in the present action conflicts with prior decisions of the same Court. Petitioner cannot call upon the Supreme Court of Florida to correct its conflicting decisions. To obtain due process under the Fourteenth Amendment of the Constitution, Petitioner has no higher Court, other than the Supreme Court of the United States, to decide the matter when the two decisions of the Supreme Court of the State of Florida conflict with each other.

V. Respondent petitioned the Supreme Court of Florida to amend the Rules Governing Unlicensed Practice to allow non-lawyers to prepare forms which had been approved the Supreme Court but failed to include, with its Petition, forms for approval. The public has indicated their need for the assistance which Respondent intended to provide by its petition.

Respondent now seeks to enforce a regulation which was and continues to be impossible for Petitioner to comply with. Respondent's actions will be counterproductive to the needs of the public who are served by the amendment to Rules Governing Unlicensed Practice.

Amendment Fourteen of the Constitution of the United States prohibits a state from making or enforcing a law which abridges a privilege of its citizen, denying a person of life, liberty and property, and denying a person equal protection under the law. The Supreme Court of the State of Florida, in allowing Respondent to create a regulation which is impossible to comply with, has made and is enforcing a law which abridges a privilege of Petitioner, denies Petitioner of her life, liberty and property, denies Petitioner equal protection under the law, and ultimately denies to the public of their life, liberty and property.

CONCLUSION

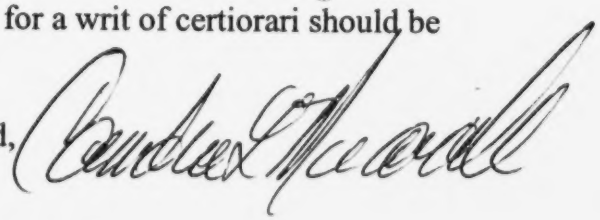
Petitioner supports the obligation of Respondent to enforce the regulations concerning the practice of law. However, Respondent, if an effort to meet public demand and scrutiny, promulgated the amendment to the rule regulating non-lawyers interaction with the public. Petitioner has made every effort to comply with the regulation which Respondent submitted to the Supreme Court of Florida for approval. Respondent has thwarted all actions taken by Petitioner in the effort to comply with the regulation. The regulation has been and continues to impossible to comply with. Respondent has also placed restrictions upon the usage of the word "legal" based upon unsupported beliefs of Respondent. Respondent, like all administrative agencies of our government, both state and federal, must act within the laws afforded to the citizens. No administrative agency can be allowed to promulgate rules which cannot be performed or otherwise complied with.

The Supreme Court of Florida has made decisions in this action contradictory to prior decisions on related matters. Since the action against Petitioner was commenced in the Supreme Court of Florida, there is no higher Court, than the Supreme Court of the United States, for Petitioner to seek recourse to the regulations and restrictions that have been placed upon Petitioner.

Petitioner how places her life and liberty in the hands of this Court in an effort to seek justice and due process under the Fourteenth Amendment of the Constitution of the United States.

Based upon the authorities cited and the argument presented, the petition for a writ of certiorari should be granted.

Respectfully submitted,
Dated: 12/16/00



APPENDIX A

DECISION OF SUPREME COURT OF FLORIDA
No. SC93101

The Florida Bar, Complainant,
vs.
Candice L. Miravalle, et., et al., Respondents.
(May 18, 2000)
Per Curium.

Candice L. Miravalle, individually, and Express Legal Services, Inc., a Florida Corporation (respondent), petition this Court to review a referee's report recommending that respondent be enjoined from engaging in the unlicensed practice of law. We have jurisdiction. See Art V, Section 15, Fla. Const.

FACTS

The Bar filed a Petition Against the Unlicensed Practice of Law against respondents. After receiving responses to interrogatories, the Bar filed a motion for summary judgment. The appointed refereed granted the Bar's motion and ordered that respondents be permanently enjoined from engaging in the practice law. The referee incorporated the order granting the summary judgment motion into his report filed with this Court. The following is a summary of the referee's findings of fact.

Candice Miravalle (Miravalle) is the owner and operator of Express Legal Services, Inc., a business in Melbourne, Brevard County, Florida. At no time during these events was Miravalle a member of The Florida Bar. In December 1995, Miravalle prepared a marital settlement agreement and final judgment of dissolution of marriage for Peter and Holly Berkowitz. In August 1996, Miravalle prepared a motion to reopen a bankruptcy case, a motion seeking cancellation and discharge of a judgment, a motion to declare that a judgment was not a lien on homestead property and to quiet title, and orders relating thereto, for Frances Totten. In September

1997, Miravalle prepared a motion to reopen a bankruptcy case and notice of service for Joseph Delphino. None of the abovementioned documents were forms approved by the Supreme Court of Florida. In her responses to the Bar's interrogatories, respondent Miravalle admitted that she: (a) engaged in oral communications to obtain information to prepare these documents; (b) took information from other documents in order to prepare these documents; (c) engaged in legal research with regard to these documents; and draft and typed these documents.

Respondents ran newspaper advertisements during 1997, 1998, and 1999 containing the question, "Are you ignoring your legal needs because you can't afford an attorney?" These advertisements contained respondent's business name and listed legal areas in which Express Legal Services offered assistance.

The referee found that there were no genuine issues of material fact. The referee then concluded that respondents were engaged in the unlicensed practice of law because they were not simply operating a secretarial or typing service, but instead were rendering personal services which could reasonably cause members of the public to rely on them to properly prepare legal documents. Further, the referee found that respondents' use of their business name and advertisements constitutes the unlicensed practice of law because the business name and advertisements suggested to the public that respondents were authorized to provide legal services when, by law, respondents were only authorized to provide secretarial and typing services.

In the report filed with this Court, the refereed recommends that we ratify and adopt the summary judgment ordered entered against respondent, enjoin respondents from engaging in the practice of law, and tax costs against respondents.

Respondents petition this Court for review, objecting to the referee's report and claiming that the referee erred in granting the Bar's motion for summary judgment.

Respondents argue their conduct does not constitute the practice of law. Alternately, respondents argue that even if their conduct constitutes the practice of law under current case law, this Court should reconsider its prior holdings and find that paralegals and other nonlawyers must be allowed to perform legal services. Respondents argue that to hold otherwise would violate their constitutional right to contract and also deprive them of equal protection of the laws.

ANALYSIS

The respondent challenge the propriety of the referee's entry of a summary judgment in this unlicensed practice of law (UPL) case. We agree with the referee and approve the referee's finding. In Florida Bar v. Daniel, 626 So.2d 178, 183 (Fla. 1993), a bar disciplinary proceeding, this Court held:

Under Rule Regulating The Florida Bar 3-7(e)(1), once a formal complaint has been filed and forwarded to a referee for hearing, the Florida Rules of Civil Procedure apply except where otherwise provided in the rule. Florida Rule of Civil Procedure 1.510(c) provides for summary judgment where --- it is shown there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Thus, a referee has the authority in an UPL case to enter a summary judgment under the above-stated circumstances.

In the instant case, the Bar and respondents agree that respondents prepared legal documents which were not forms approved by this Court. Both agree that Miravalle engaged in oral communications, took information from other documents, and conducted legal research for the purpose of preparing these documents. Finally, respondents do not contest that they used the word "legal" in their business name and advertisements; nor do they contest the authenticity of the advertisements offered into evidence by the Bar. Therefore, there is no genuine issue of material fact and the

issue facing this Court is whether these acts constitute the unlicensed practice of law.

The referee concluded that respondents' preparation of legal documents for their customers constitutes the unlicensed practice of law. We agree. This Court has repeatedly held that the preparation of legal documents by a nonlawyer for another person to a greater extend than typing or writing information provided by the customer on a form constitutes the unlicensed practice of law. See. e.g., The Florida Bar v. Davide, 702 So2d 184 (Fla. 1997); Florida Bar v. Smania, 701 So2d 835 (Fla. 1997); Florida Bar v. American Senior Citizens Alliance, Inc., 689 So2d 255 (Fla. 1997); Florida Bar v. Schramek, 616 So2d 979 (Fla 1993). This Court has also specifically held that a nonlawyer who orally takes information from an individual to complete a form when the forms has not been approved by this Court is engaged in the unlicensed practice of law. See Florida Bar v. Catarcio, 709 So2d 96 (Fla. 1998). (FN1) Thus, we find a matter of law that respondents engaged in the unlicensed practice of law by engaging in oral communications, taking information from written documents, and conducting legal research for the purpose of preparing legal documents not approved by this Court.

We also agree with the referee that respondents' use of their business name and the manner in which they advertise their services constitute the unlicensed practice of law. In Florida Bar v. Davide, this Court held that it constituted the unlicensed practice of law for a nonlawyer to use "Florida Law Center, Inc." as a company name because "the use of the name is misleading and gives the public the expectation that Florida Law Center, Inc., has expertise in the field of law." 702 So 2d at 187485. We further held in Davide that it constitutes the unlicensed practice of law for a nonlawyer to advertise that his or her company specializes in legal areas and to use advertisements that describe legal procedures. See id, at 185.

In the instant case, respondents use the business name "Express Legal Services, Inc." In their advertisements, they ask the question, "Are you ignoring your legal needs because you can't afford an attorney?" Under this question is a list of legal fields, such as bankruptcy, adoption, eviction and divorce, in which respondents offer assistance. Thus, we conclude that respondents' use of the name "Express Legal Services, Inc" and the manner in which they advertise their services constitute the unlicensed practice of law under Davide.

We also conclude that respondents challenges concerning the constitutionality of prohibiting nonattorneys from offering legal services are without merit. In the past, we have said that regulating the practice of law among nonlawyers does not violate nonlawyers' constitutional right. In Schramek, 616 So2d at 983, this Court found no merit to the nonlawyer's allegation that the regulation of nonlawyers unconstitutionally deprived him of his right to engage in business. In so holding, this Court stated that "prohibiting the unlicensed practice of law is 'not done to aid or protect the members of the legal profession either in creating or maintaining a monopoly or closed shop. It is done to protect the public from being advised and represented in legal matters by unqualified persons.'" Id. (quoting State ex rel. Fla. Bar v. Sperry, 140 So2d 587, 595 (Fla. 19962)); see also Florida Bar v. Furman, 376 So 2d 378, 381 (Fla. 1979) (adopting referee's report in UPL case where refereed stated "(t)he fact that she is an expert stenographer does not give her any legal right to engage in divorce and adoption practice anymore than a nurse has the right to set up an office for performing tonsillectomy or appendectomy operations or a dental assistant to do extractions or fill teeth"). Because the regulation of the unlicensed practice of law services the critical role of protecting the public from unqualified individuals who are attempting to perform legal services, nonlawyers do not have a constitutional right to practice law by drafting legal documents or giving legal advise.

CONCLUSION

Accordingly, we approve the report of the referee and adopt the order granting the Bar's motion for summary judgment. Respondents Candice L. Miravalle, individually, Express Legal Services, Inc., a Florida Corporation, and any employees or persons acting in concert with respondents are permanently and perpetually enjoined from engaging in the unlicensed practice of law in the State of Florida. Judgment is entered for the Florida Bar, 650 Apalchee Parkway, Tallahassee, Florida 32399, for recovery of costs from respondents Candice L. Miravalle, individually, and Express Legal Services, Inc., in the amount of $517.23, for which sum let execution issue.

It is so ordered.

HARDING, C.J, and SHAW, WELLS, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur. NO FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

FN1. A non lawyer may take information orally pursuant to Rule Regulating the Florida Bar 10-1.2(1), which provides: (I)t shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communications to assist a person in the completion of blanks on a legal form approved by the Supreme Court of Florida. Oral communications by nonlawyers are restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the person how to file the form

(Emphasis added.) Respondents clearly exceeded the conduct allowed to be performed by nonlawyers under this rule.

APPENDIX B

DECISION OF SUPREME COURT OF FLORIDA Monday, July 17, 2000
Case No. SC93101
Lower Tribunal Nos.: 983119(18A), 973200(18A), 973111(18A)
The Florida Bar, v. Candice L. Miravalle et al.

Complainant, Respondents.
Respondents' Motion for Rehearing is hereby denied
Wells, C.J. and Shaw, Harding, Anstead, Parient, Lewis and Quince, JJ, concur.

APPENDIX C

STATE OF FLORIDA,
RULES GOVERNING UNLICENSED PRACTICE 10-2
Definitions
Rule 10-2.1 Generally
(a) Unlicensed Practice of Law. The unlicensed practice of law shall mean the practice of law, as prohibited by statute, court rule and case law of the State of Florida. For purposes of this chapter, it shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communications to assist a person in the completion of blanks on a legal form approved by the Supreme Court of Florida. Oral communications by nonlawyers are restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the person how to file the form.

APPENDIX D

ANSWERS TO INTERROGATORY #13 BY THE DEFENDANT TO PLAINTIFF

Interrogatory #13 - If it is not the goal of the Supreme Court of Florida to make forms available for use by legal technicians, state how non-lawyers may comply with Rule 10 of the Rules Regulating the Florida Bar, which sets forth that non-lawyers may assist in the completion of forms approved by the Supreme Court of Florida.

ANSWER #13 - Nonlawyers may sell blank pre-printed forms, of their own creation or as created by others. Nonlawyers may type the form once the individual has provided the necessary information. If the form being completed is not a form approved by the Supreme Court of Florida, then the information needed to complete the form must be obtained from the customer in writing, either by the customer first completing the blank form by hand, or by the customer completing an information sheet in which the blanks correspond directly to the blanks on the form. These forms must actually be used as forms; the nonlawyer may not modify the legal (non-factual) portions of the form on a customer-by-customer basis, nor may the nonlawyer make any suggestions as to the language used in the blank.

APPENDIX E

ANSWERS TO INTERROGATORY #4 BY THE PLAINTIFF TO DEFENDANT

4. Concerning Berkowitz, Totten, DelPino

b. Individual who performed legal research - Candice L. Miravalle.

c. Individual who drafted document - Candice L. Miravalle.

d. Individuals with whom document discussed - Mr. and Mrs. Berkowitz, Frances Totten and Elizabeth Arthur (daughter), Mr. DelPino.

e. Individual who typed document - Candice L. Miravalle

i. Information provided in writing -

Berkowitz - Initial pleadings filed on behalf of Mr. and Mrs. Berkowitz by their then legal counsel and Mediation Agreement.

Totten - Bankruptcy pleadings and Deed to property.

DelPino - Letter from creditor concerning debt.

j. Information provided verbally -

Berkowitz -Information contained in documents which was not contained in initial pleadings or Mediation Agreement.

Totten - Information contained in documents which was not contained in bankruptcy pleading or Deed to property.

DelPino - Information contained in documents which was not contained in letter from creditor.

APPENDIX F

PARTIAL FORM OF MOTION FOR SUMMARY JUDGMENT OF RESPONDENT

1. There are a number of undisputed facts in this case which demonstrate clear and convincing evidence that the Respondents have engaged in the unlicensed practice of law.

2. In particular, Respondent Miravalle engaged in the unlicensed practice of law by performing legal research for customers, drafting legal documents, and engaging in oral communications with customers to obtain information to prepare legal documents which were not Florida Supreme Court approved forms.

3. Express Legal Services, Inc., through its business name and by the content of its advertisements, held itself out as being able to provide legal services to the public.

APPENDIX G

PARTIAL TRANSCRIPT OF HEARING BEFORE
HONORABLE KENNETH R. LESTER JR.
JUNE 1, 1999

Court: And I take it that -- I don't know if the Bar just doesn't have an interest in what's going on in bankruptcy Court as much since it's the federal domain. Defendant: You lost me on that.

Court: As far as forms being prepared. Defendant: As far as the Petitions being prepared?

Court: No, no, no. Forms, as far as the Bar preparing forms to utilize for nonlawyers.

Defendant: The petitions are already forms. I believe that they are in the bankruptcy code someplace, so it's not for us to really go there.

Court: That's what I'm saying. I don't know if the Bar just doesn't have an interest because it's federal in nature, so to speak?

Defendant: Correct.

Court: See what I'm saying? Defendant: Right.

No. _____

SUPREME COURT OF THE UNITED STATES

CANDICE L. MIRAVALLE,
personally and on behalf of:
EXPRESS LEGAL SERVICES, INC.

-

Petitioner

vs.

THE FLORIDA BAR,

-

Respondent

PROOF OF SERVICE

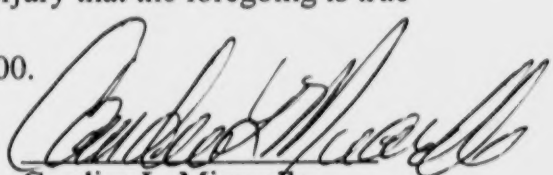
I, CANDICE L. MIRAVALLE, do declare that on this date, October 16, 2000, as required by Supreme Court Rule 29, I have served the enclosed Petition for Writ of Certiorari on counsel for The Florida Bar, by depositing an envelope containing the above documents in the United States mail properly addressed to him and with first-class postage prepaid.

The name and address of that served are as follows:

The Florida Bar
Barry Rigby
1200 Edgewater Drive
Orlando, Fl 32804

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 16, 2000.



Candice L. Miravalle